

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Complaint of the Associated
Mail and Parcel Centers, et al.

Docket No. C2012-1

ORDER DISMISSING COMPLAINT

(Issued February 14, 2013)

I. INTRODUCTION

On March 15, 2012, the Associated Mail and Parcel Centers (AMPC), the National Alliance of Retail and Ship Centers (NARSC), and 11 additional organizations representing private mailbox providers¹ (Complainants) jointly filed a complaint with the Commission.² Complainants state that starting in January 2012, the Postal Service began offering to competitive Post Office Box service customers the option to receive certain enhanced services, namely email notification of mail delivery (email notification), the option to use a street address and a “#” designation in lieu of a “P.O. Box”

¹ Postal Service regulations define private mailbox providers as Commercial Mail Receiving Agents (CMRAs). See Domestic Mail Manual section 508.1.8.

² Complaint Regarding Postal Service Offering Enhanced Services Product for Competitive PO Boxes, March 15, 2012 (Complaint).

designation (street addressing), and the option to receive packages from private carriers (private carrier package delivery). Complaint at 10. Complainants contend that due to Postal Service “tax and marketing advantages” CMRAs will be placed at a competitive disadvantage and will face a decrease in potential sales with the introduction of the enhanced services. *Id.* at 6-9.

Complainants make three claims. First, they claim that the Postal Service violated 39 U.S.C. § 3642 by offering the enhanced services without first obtaining Commission approval. *Id.* at 10-12. Second, they claim that the Postal Service may have violated 39 U.S.C. § 3633 and Commission rules related to competitive products. *Id.* at 11-12. Third, they claim that the Postal Service violated 39 U.S.C. § 3661 because by offering the enhanced services, the Postal Service effected a “change in the nature of postal services” for which it was required to first obtain an advisory opinion from the Commission. *Id.* at 14-15.

II. MOTION TO DISMISS

On April 4, 2012, the Postal Service filed a motion to dismiss the Complaint.³ On June 13, 2012, the Commission issued an order granting the Motion to Dismiss as to Complainants’ claim under section 3661 and denying the Motion to Dismiss as to Complainants’ claims under sections 3633 and 3642.⁴ With respect to the section 3661 claim, the Commission reasoned that section 3661 “deals with broader questions involving the nature of postal services generally” while changes to individual products, such as the enhanced services, are appropriately considered under other provisions of chapter 36, such as sections 3622, 3632, 3633, and 3642. Order No. 1366 at 12-13. The Commission concluded that the introduction of the enhanced services “does not implicate section 3661....” *Id.* at 12. With respect to the claims under sections 3633

³ Motion of the United States Postal Service to Dismiss Complaint, April 4, 2012 (Motion to Dismiss).

⁴ Order on Motion to Dismiss Holding Complaint in Abeyance Pending Further Proceeding, June 13, 2012, at 15 (Order No. 1366).

and 3642, the Commission indicated that it was unclear “whether the Complaint raises material issues of law or fact.” *Id.* at 14. Because the Postal Service had not submitted an “appropriate filing that describe[d] the nature and implementing rules for [the] enhanced services,” the Commission found that it could not “accurately evaluate their impact.” *Id.* In the interest of efficiency, and to afford Complainants and the Postal Service a forum to air their views, the Commission established Docket No. MC2012-26 to permit the Postal Service to submit an elective filing pursuant to 39 C.F.R. § 3020 subpart B to provide “such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.” *Id.* (quoting 39 C.F.R. § 3020.32(ii)). The Commission ordered that the Complaint be held in abeyance during the pendency of these proceedings. *Id.* at 14-15.

III. DOCKET NO. MC2012-26

On July 9, 2012, the Postal Service submitted its Elective Filing.⁵ In it, the Postal Service contended that the enhanced services do not “create a new product” and therefore that it was not required to make a separate filing with the Commission in order to comply with section 3642. Elective Filing, Attachment A at 1-2. In addition, the Postal Service contended that it expects competitive Post Office Box service to have a cost coverage that exceeds 140 percent, thereby “ensuring that the requirements of [section] 3633 will be satisfied.” *Id.* Attachment B at 2. It claimed that this is due to high pre-existing cost coverage, minimal cost to implement the enhanced services, and a 10 percent revenue increase that “should only improve . . . cost coverage.” *Id.*

In comments filed in response to the Elective Filing, 478 individual CMRAs (collectively Competitors), as well as some Complainants in this proceeding, focused primarily on alleged competitive harm caused by pre-existing CMRA regulations, and

⁵ Docket No. MC2012-26, Response of the United States Postal Service to Order No. 1366, July 9, 2012 (Elective Filing).

not on whether the Postal Service may lawfully offer enhanced services without prior Commission authorization.⁶ Competitors argued that the regulations impose additional costs on CMRAs and create an unfair competitive environment.⁷ Competitors also argued that if the Postal Service were to eliminate Saturday delivery of mail, it would be unfair to CMRAs because the Postal Service would continue to provide Saturday delivery to Post Office Box service customers, but not to CMRA customers. AMPC Comments at 2. Competitors and the Public Representative contended that by imposing the CMRA regulations, the Postal Service may be acting in violation of title 39 or the Federal antitrust laws.⁸ Among other relief sought, Competitors asked that the Commission reinstitute the Complaint or permit them to file a new complaint. AMPC Comments at 8. The Public Representative asked that the Commission dismiss the Complaint without prejudice and permit Complainants to file a new complaint to address the issues raised by Competitors. PR Comments at 7.

IV. COMMISSION ANALYSIS

On February 14, 2013, the Commission issued an order on the Elective Filing.⁹ In it, the Commission reviewed Complainants' claims that the Postal Service was unlawfully offering competitive Post Office Box service with enhanced services. The Commission concluded that the Postal Service's offering the enhanced services did not create a "new product" for purposes of section 3642. Order No. 1657 at 29. In addition,

⁶ See, e.g., Docket No. MC2012-26, Comments of AMPC on Postal Service Elective Filing in Response of the United States Postal Service to Order No. 1366, August 7, 2012, at 1-2 (AMPC Comments); Docket No. MC2012-26, Comments of the National Alliance of Retail Ship Centers on Postal Service Elective Filing in Response of the United States Postal Service to Order No. 1366, August 7, 2012, at 3-4 (NARSC Comments); Docket No. MC2012-26, Comments of Packaging Depot LLC, August 7, 2012.

⁷ AMPC Comments at 3; NARSC Comments at 3; Docket No. MC2012-26, Comments of the Independent Coalition of Franchise Owners, August 7, 2012, at 1.

⁸ See Docket No. MC2012-26, Comments of the Public Representative, July 26, 2012, at 10 (PR Comments); AMPC Comments at 3.

⁹ Docket No. MC2012-26, Order on Elective Filing Regarding Post Office Box Service Enhancements, February 14, 2013, (Order No. 1657).

the Commission concluded that the fees charged for enhanced competitive Post Office Box service comply with the standards of section 3633. *Id.* at 26.¹⁰ These conclusions resolve the remaining issues at issue in the Complaint.

In this proceeding, the Complainants challenge the lawfulness of the Postal Service offering enhanced services without first obtaining Commission approval under section 3642. Complaint at 10-12. They also argue that the fees for enhanced competitive Post Office Box service may violate section 3633. *Id.* at 11-12. Order No. 1657 conclusively addresses those issues and rejects those arguments. Accordingly, the Commission denies Complainants' remaining claims that the Postal Service's offering of enhanced competitive Post Office Box service violates 39 U.S.C. §§ 3633 and 3642 and dismisses the Complaint.

In its companion order in Docket No. MC2012-26, the Commission also concluded that Competitors' arguments unrelated to the issue of the lawfulness of enhanced competitive Post Office Box service were beyond the scope of that proceeding. That finding applies to the Complaint.

Competitors' arguments regarding the CMRA regulations and the potential elimination of Saturday delivery are outside the scope of the Complaint. In dismissing the Complaint, the Commission makes no ruling on claims not before it in this proceeding.

¹⁰ The Commission incorporates by reference its discussion of these legal issues as set forth in Order No. 1657.

It is ordered:

1. Complainants' claims that the Postal Service's offering of enhanced competitive Post Office Box service violates 39 U.S.C. §§ 3633 and 3642 are denied.
2. The Complaint Regarding Postal Service Offering Enhanced Services Product for Competitive PO Boxes, filed March 15, 2012, is dismissed.

By the Commission.

Ruth Ann Abrams
Acting Secretary